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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,804	12/03/2001	VAN Voris	47309-00031USP1	9427

30223 7590 07/18/2005
JENKENS & GILCHRIST, P.C.
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EXAMINER

LEVY, NEIL S

ART UNIT PAPER NUMBER

1615

DATE MAILED: 07/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/005,804

Applicant(s)

VORIS ET AL.

Examiner

NEIL LEVY

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5,8,9,12,13,15,16,18,19,26,34-36,39,43,44 and 77-131 is/are pending in the application.
- 4a) Of the above claim(s) 19 and 131 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,8,9,12,13,15,16,18,34-36,39,43,44,77-86 and 88-130 is/are rejected.
- 7) ☒ Claim(s) 26,87,107 and 125 is/are objected to.
- 8) ☒ Claim(s) 1,2,4,5,8,9,12,13,15,16,18,19,26,34-36,39,43,44,77-131 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Newly submitted claim 131 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: we now have 8 Layers; never before examined.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 131 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected ~~invention~~ ^{invention}, there being no allowable generic or linking claim.

Applicant timely traversed the restriction (election) requirement in the reply filed on ~~paper~~ ^{paper #9},

Claims 1, 2, 4, 5, 9, 12, 13, 16, 18, 26, 34-36, 39, 43, 44, 77-80, 83, 84, 86-97, 101-103, 105-116, 120-122, 124-130 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected "wood-boring pesticidally-" is not definitive as describing the pesticide – we wonder if "wood boring fungus pesticidally effective amounts" are intended. Further, the substantially no" or "minute amounts" are not quantified, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 5/08/97.

Claims 5/80/97 already have a polymeric matrix with a pesticide bound within the matrix and so not further limit the independent claim.

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Claims 1, 4, 5, 9, 12, 13, 16, 18, 39, 94-97, 101, 105, 106, 110, 112 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Crook et al 62224957.

Crook in fact provides the instant co extruded barrier, albeit for an intended function beyond that instantly claimed. However, the added biocides in the LDPE layer with fungicides, provide the instant composition, obvious for one to use for the added functions instantly claimed. We note that the instant claims are now to wood boring pesticides – we see those of crook as wood-boring pesticides – dioxin, dichlorophene inayilil salts, the instant low volatility pesticides (col. 3, bottom). Note claim 94 is less limited than any of the last rejected claims “only minute amounts” is met by the (col. 3, top) substantially prevented from escaping. Applicants arguments that Crook is non-analogous are not persuasive because the Crook reference is to barriers with pesticides, and the only difference between applicants and Crooks barrier is how they we used; obvious for Crook to be used as applicants use, although applicants use is not applicable to Crooks use. However; Crook also meets what is claimed is a composition not methods of use new claims.

Claims 1, 2, 4, 5, 8, 9, 12, 13, 15, 16, 18, 34-36, 39, 43, 44, 77-86, 88-106, 108-124, 126-130 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Vonkohor in view of Martin et al, Dohrer and Van Voris 5801194.

New claims are less limiting than previously rejected claims thus also rejected.

The rejection of record is maintained. Applicant's arguments of no motivation is not persuasive martinnet provides for extended use, if desired, and all references are seen as open to the Knowledge of one in the art to pressure in order to optimize known

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parameters of interest: reduction of toxicity to non-target species, reduction of Pesticide Leaching into soil and ground water, increased duration of effects, for example. Further, the references, Von Kohown address a number of insect control issues, not only attracting to kill, and does provide the contains pesticide laminate.

Applicant's arguments filed on 1/18/05 have been fully considered but they are not persuasive. Applicant's arguments have been considered, but where rejections maintained, are not found convincing. Otherwise, rejections have been withdrawn in view of amendments and arguments.

Claims 26, 87, 107, 125 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (571) 272-0619. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Levy/LR
June 29, 2005

NEIL S. LEVY
PRIMARY EXAMINER